

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Gossett	Art Unit :	2611
Patent No. :	7,453,921	Examiner :	Y. Tse
Issue Date :	November 18, 2008	Conf. No. :	2062
Serial No. :	10/015,013		
Filed :	December 11, 2001		
Title :	LPC FILTER FOR REMOVING PERIODIC AND QUASI-PERIODIC INTERFERENCE FROM SPREAD SPECTRUM SIGNALS		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

Applicant hereby petitions for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Issue Notification mailed October 29, 2008 for the above-referenced application indicates that the Patent Term Adjustment at issuance is 917 days, and subsequently issued U.S. Patent 7,453,921 confirms this extension. Applicant requests a total PTA increase from 917 to 1081 days. In particular, for the reasons outlined in detail below, Applicant requests reconsideration of the Patent Term Adjustment calculation to increase PTO Delay from 1272 days to 1397 days, and to reduce Applicant delay from 355 to 316 days.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

- 1) **The PTO mailed a delayed 14-month first non-final Office Action on June 16, 2003, thereby according a PTO Delay of 125 days. Applicants do not dispute herein this patent term adjustment calculation for this PTO "A Delay."**
- 2) **Applicants filed a delayed response on October 20, 2003. Applicants were accorded a delay of 34 days. Applicants do not dispute herein this patent term adjustment for Applicant Delay.**

- 3) Applicants filed a delayed response on May 24, 2004. Applicants were accorded a delay of 34 days. Applicants do not dispute herein this patent term adjustment for Applicant Delay.
- 4) Applicants filed a delayed response on November 12, 2004. Applicants were accorded a delay of 36 days. Applicants do not dispute herein this patent term adjustment for Applicant Delay.
- 5) The PTO mailed a delayed non-final Office Action on July 5, 2005, thereby according a PTO Delay of 115 days. Applicants do not dispute herein this patent term adjustment calculation for this PTO "A Delay."
- 6) Applicants filed a delayed response on October 12, 2005. Applicants were accorded a delay of 7 days. Applicants do not dispute herein this patent term adjustment for Applicant Delay.
- 7) The PTO mailed a delayed non-final Office Action on August 29, 2006, thereby according a PTO Delay of 198 days. Applicants do not dispute herein this patent term adjustment calculation for this PTO "A Delay."
- 8) Applicants filed a delayed response on December 4, 2006. Applicants were accorded a delay of 5 days. Applicants do not dispute herein this patent term adjustment for Applicant Delay.
- 9) Applicants filed a delayed response on August 13, 2007. Applicants were accorded a delay of 62 days. Applicants do not dispute herein this patent term adjustment for Applicant Delay.
- 10) Applicants filed a response on November 16, 2007. Applicants were accorded a delay of 95 days for responding to a notice of a non responsive amendment. Applicants do not dispute herein this patent term adjustment for Applicant Delay.

- 11) Applicants filed a delayed Request for Continued Examination on June 5, 2008. Applicants were accorded a delay of 31 days. Applicants do not dispute herein this patent term adjustment for Applicant Delay.
- 12) Applicants filed an amendment with drawings after allowance September 29, 2008. Applicants were accorded a delay of 12 days. Applicants do not dispute herein this patent term adjustment for Applicant Delay.
- 13) Applicants were accorded a delay of 39 days for the late submission of drawings. Applicants do not agree with this patent term adjustment for Applicant Delay. The PTO responded to the amendment and drawings on October 10, 2008 and applicants were already accorded a 12 delay as shown above.
- 14) The application was filed on December 11, 2001 and the patent issued on November 18, 2008, more than three years later. The earliest Request for Continued Examination was filed on June 5, 2008. Only 834 days of PTO delay were calculated for issuance of the patent after three years from filing. Applicants respectfully submit that the PTO's calculation of this PTO "B Delay" contains an error and that the correct PTO Delay for issuance beyond three years from filing is 959 days, as outlined further below.

REMARKS

Applicants have calculated the PTA in accordance with the clear intent of Congress. As outlined in *Wyeth v. Dudas* (*Wyeth et al. v. Jon W. Dudas*, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that periods of time can “overlap” is if they occur on the same day, and if an “A delay” occurs on one calendar day and a “B delay” occurs on another, they do not overlap, and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. “A Delays” are defined as delays by the Office under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO response. “B Delays” are defined as delays by the Office under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than 3-year application pendency.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, relies on the premise that the application was delayed under § 154(b)(1)(B) before the initial three-year period expired.

The *Wyeth* court determined that this construction cannot be squared with the language of § 154(b)(1)(B), which applies “if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years,” and that “B delay” begins once the PTO has failed to issue a patent within three years, not before.

In the current PTA calculation, the Office has only given credit for the larger of “A Delay” or “B Delay,” rather than the combined sum of “A Delay” and “B Delay” (which does not include any days after three years from filing where “A” and “B” delays overlap).

In this patent, “A Delay” should be calculated as 438 days, and “B Delay” should be calculated as 1272 days. There is an overlap of 313. Thus, the total PTO Delay should be calculated as 1397 days.

In consideration of the events described above, Applicants believe the PTA calculation of 917 days is incorrect. As such, Applicants respectfully request reconsideration of the patent term adjustment in the following manner:

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- 1) Total PTO Delay should be calculated as 1397 days;
- 2) Total Applicant Delay should be calculated as 316 days; and
- 3) Total PTA should be calculated as 1081 days.

Applicants note that this patent **is not** subject to a terminal disclaimer.

Please apply the fee of \$200 required under 37 C.F.R. § 1.18(e) and any other required charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: January 21, 2009

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